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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)

Implementation of Sections of the)
Cable Television Consumer Protection)
and Competition Act of 1992)
Rate Regulation)

Leased Commercial Access)

CS Docket No. 96-60

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**INFORMATION COLLECTION COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION**

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SUMMARY

The Small Cable Business Association, representing the interests of small cable, strongly objects to the information disclosure requirements recently promulgated by the Commission. These regulations place heavy financial burdens on small systems and small companies without increasing the practical utility of the data provided.

The Commission will require all cable systems to provide certain data regarding their ability to provide leased access and the terms and conditions offered. The response period is sufficiently short that these systems will be required to prepare all the data in advance, at an estimated cost of \$24 million to small systems.

The Commission will require this, even though the triggering event the Commission uses to actually provide the information -- the receipt of a request for leased access information -- has never occurred for most small systems during the past 11 years. The time constraints imposed by the regulation constitutes massive overkill. The regulation could be easily amended to give small systems a 60 day response period, avoiding the need for \$24 million to be spent for a request that may never be made.

SCBA has also proposed substantial modifications and alternatives to the Commission's proposals governing computation of rates and channel availabilities. These proposals require individual calculations that can only be performed after substantial dialog between the applicant and the system, making impossible the advance preparation of standard rate cards and availabilities. Because the methods used to derive the data requiring disclosure may change as a result of the Commission's current *Notice of Proposed*

Rulemaking, the Commission should at least delay the implementation of the information disclosure regulations for small systems until it can resolve these issues.

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**INFORMATION COLLECTION COMMENTS
OF THE
SMALL CABLE BUSINESS ASSOCIATION**

I. INTRODUCTION

The Small Cable Business Association ("SCBA"), through counsel, files these Comments in response to the Initial Paperwork Reduction Act of 1995 Analysis of the *Order on Reconsideration of the First Report and Order and Further Notice of Proposed Rulemaking* in this docket released on March 29, 1996 ("*Reconsideration Order*"). SCBA takes strong exception to both the adopted and proposed information disclosure rules. The information disclosures mandated by these rules are not necessary for the Commission to properly perform its duties, the information requested has no practical utility, the Commission has not attempted to measure the burden of providing the information and the Commission has made no effort to minimize the burden of collecting the information.

SCBA strongly urges the Commission to revise the regulations consistent with the recommendations made by SCBA in its comments in response to the *Further Notice of*

Proposed Rulemaking. SCBA also strongly urges the Office Of Management and Budget not to allow the Commission's rules to go into effect.

A. The Small Cable Business Association

SCBA is well known to the Commission as a participant and strong advocate for the needs and concerns of small cable in most rulemaking proceedings over the past three years implementing the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act").

SCBA grew from a grass-roots effort of small operators to cope with the onerous burdens imposed by the Commission's implementation of the 1992 Cable Act. From its first meeting in May 1993, SCBA has grown into a proactive force, currently having over 350 members.

B. SCBA's Leased Access Filings

The new leased access rules adopted by the *Order on Reconsideration* and the rules proposed by the *Further Notice of Proposed Rulemaking* place disparate burdens on small cable which are not required or permitted by statute. SCBA sets forth a comprehensive review and proposals to modify the leased access rules for small cable in a series of filings:

1. **Comments.** SCBA provides input on the rate formula and alternate ways to implement leased access requirements for small cable.
2. **Comments on Initial Regulatory Flexibility Act Analysis ("IRFA").**
SCBA comments on the deficiencies in the Commissions IRFA.
3. **Comments on the Initial Paperwork Reduction Act of 1995 Analysis.**
SCBA demonstrates how the information gathering rules adopted by

the Commission in the *Order on Reconsideration* and the *Further Notice of Proposed Rulemaking* are unnecessary, lack utility and are overly burdensome for small cable.

II. THE RULES ADOPTED BY THE COMMISSION PLACE UNREASONABLE AND UNNECESSARY BURDENS ON SMALL CABLE

Almost three years after release of the *First Report and Order*¹, the Commission issued its *Order on Reconsideration*², imposing strict information reporting obligations on all cable operators, without regard to the necessity of applying the burden to small cable and without considering less burdensome alternatives in direct violation of its obligations under the Regulatory Flexibility Act.

A. The Rules Adopted By The Commission Require Strict Compliance By All Operators.

As part of its "reconsideration" the Commission without warning modified its rules governing the provision of leased access availabilities and rate information. Drawing on information gathered from its leased access complaint process, the Commission determined that operators were not providing leased access information on a timely basis.³ The

¹*Report and Order and Further Notice of Proposed Rulemaking*, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Docket No. 92-266 (released May 3, 1993).

²*Order On Reconsideration Of The First Report And Order And Further Notice Of Proposed Rulemaking*, In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation; MM Docket No. 92-266 and CS Docket No. 96-60 (released March 29, 1996) ("*Reconsideration Order*").

³*Reconsideration Order* at ¶40.

Commission then mandated that all cable operators provide a leased access applicant with the following information within seven business days of the programmers's request:

1. A complete schedule of full and part-time leased access rates;
2. How much of its set-aside capacity is available;
3. Rates associated with technical and studio costs; and
4. If requested, a sample leased access contract.⁴

B. The Commission Adopted These Rules Without Notice And Comment And Without Preparing An Initial Regulatory Flexibility Analysis.

The Commission adopted totally new information reporting requirements, not due to an outcry by any petitioners, but as a result of its own observations.⁵ Rather than propose new rules, as it did in the *Further Notice of Proposed Rulemaking*, the Commission simply adopted stringent and burdensome information reporting regulations without the benefit of notice or comment in violation of the Administrative Procedures Act⁶ and without performing an Initial Regulatory Flexibility Analysis⁷ and soliciting comment on the same. Had the Commission complied with its obligations under the law, SCBA would have had a forum in which to present relevant information, obviating the necessity to file these Comments.

⁴47 C.F.R. §76.970(e).

⁵*Order on Reconsideration* at ¶40. "Our leased access complaint process has revealed that rate information is often not provided in a timely manner."

⁶5 U.S.C. §553.

⁷Failure to prepare an Initial Regulatory Flexibility Analysis violates federal law. 5 U.S.C. Section 603.

The Commission chose to ignore its obligation to consider and minimize the adverse impact of leased access regulations on small cable. Not only did the Commission shortcut the rulemaking process by not performing the Initial Regulatory Flexibility Analysis for the information reporting rules, it simply did not consider the impact on small cable. The meaningless "analysis" performed by the Commission in its current Initial Regulatory Flexibility Analysis for the rules proposed in the *Further Notice* evidences the pervasive disregard for minimizing unnecessary burdens on small cable.⁸

C. The Statutory Objective Can Be Accomplished Through Much Less Burdensome Alternatives.

The information reporting regulations adopted by the Commission require small operators to have a significant amount of leased access information available on short notice. Even a seven day response period imposes significant burdens on small cable. Operators would not have a full seven days, and in many cases much less time to respond. The regulations measure the response period from the date the leased access programmer makes the request. Most requests are made via mail, taking several days off of the seven day period. One potential leased access programmer recently sent a leased access notice via bulk mail. Bulk mail can often take more than a week to be delivered. Under the

⁸See SCBA's *Comments on the Initial Regulatory Flexibility Act Analysis*. For example, the Commission after imposing regulations that apply to every cable system in the country and that have the potential of bankrupting some small systems, states that "We anticipate a possible impact on small entities...but we do not currently have...the number of small entities that may be affected." The Commission knows the number of small cable systems and entities as it has recently based entire rulemakings based on the number of small cable systems, small cable companies and subscribers affected.

Commission's rules, therefore, an operator may face a deadline to respond to a leased access request as soon as it is received.

Even if small cable had the full seven days to respond, the short response period still requires that operators prepare their leased access plans prior to receiving a request for access. For a small operator to prepare this information will require significant diversion of management time and the likely use of outside counsel and/or consultants. SCBA estimates that the initial cost to establish leased access compliance plans, rate structures and model agreements will average \$3,000 per system. The total cost for the approximately 8,000 small systems⁹ will total \$24 million. Such a massive effort, replicated in thousands of small independently owned cable systems is unwarranted. The leased access rules have been in effect for 12 years. During this period, virtually no small systems received a single leased access inquiry. SCBA's recent member survey validated this fact. 74 percent of the members responding had not received a single request for leased access prior to 1996. Small cable has historically been ignored by leased access programmers. Consequently making them prepare for a request that may never arrive imposes unnecessary regulatory burdens.

To avoid this massive and costly anticipatory effort, SCBA recommends that the Commission simply extend an operator's response time from seven to 60 days. This allows

⁹*Sixth Report and Order and Eleventh Order on Reconsideration*, In the Matter of Implementation of Sections of the Cable Television consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket No. 92-266 (released June 5, 1995) ("*Small System Order*").

an operator time to respond to a request for leased access and avoids the need to prepare to answer a request that may never arrive.

D. Only Bona Fide Leased Access Requests Should Trigger A Responsive Obligation By Cable.

One potential leased access provider recently sent a bulk rate mailing, SCBA believes, to most of the 11,500 cable systems. The notice appears to request information about leased access. This conduct validates SCBA's concerns that small cable may be inundated by information requests by those not seriously interested in actually providing leased access programming over small cable. Most potential leased access programmers do not have the capacity to negotiate and implement 11,500 leased access agreements concurrently.

As SCBA sets forth in its Comments, the Commission must not impose these burdensome information collection and disclosure requirements on small cable absent a bona fide request for leased access. Further, the provision of information to one with no serious intent to provide leased access on a particular system removes all utility from the information.

E. The Commission Should Overhaul Its Leased Access Rules Making Implementation Of Information Gathering Rules Premature As They Will Likely Change.

SCBA has outlined a series of fatal flaws in the Commission's proposed leased access regulations. SCBA anticipates that correction of these flaws related to small systems will require individualized rate calculations based on the terms and conditions of carriage. Leased access rates terms and conditions can only be determined following direct exchange of information between the parties, making compliance with the current information

regulations, requiring disclosure of standardized uniform rates and information, meaningless. The Commission should defer implementation of these disclosure rules for small cable until the underlying leased access rules are finalized.

III. CONCLUSION

SCBA urges the Commission and the Office of Management and Budget to delay the implementation of the information reporting requirements until the Commission has fully considered and modified the leased access rules to lessen unnecessary burdens on small cable.

Respectfully submitted,



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